

LYNN DAHLE

IBLA 81-957

Decided September 22, 1981

Appeal from decision of Idaho State Office, Bureau of Land Management, declaring unpatented mining claim to be abandoned and void. I MC 39026.

Appeal dismissed.

1. Appeals--Rules of Practice: Appeals: Dismissal--Rules of Practice: Appeals: Timely Filing

The provisions of 43 CFR 4.411, requiring that a notice of appeal be filed within 30 days of service of the decision appealed from, are mandatory, inasmuch as they determine the jurisdiction of the Board to hear an appeal, and are not subject to waiver. An appeal which was not filed timely must be dismissed.

APPEARANCES: James C. Herndon, Esq., for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Lynn Dahle has appealed from a decision of the Idaho State Office, Bureau of Land Management (BLM), dated July 1, 1981, which declared the unpatented Digger placer mining claim, I MC 39026, abandoned and void because no proof of labor or notice of intention to hold the claim for 1980 was filed with BLM on or before December 30, 1980, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1(c).

The record contains a return receipt for the envelope containing the decision sent to appellant. The receipt was postmarked and signed for delivery July 6, 1981. The notice of appeal is dated August 7, 1981, transmitted to BLM by envelope postmarked on August 10, 1981, and received by BLM August 12, 1981.

[1] The time limit for filing a notice of appeal is set forth in 43 CFR 4.411(a), which states in pertinent part: "The notice of appeal * * * must be transmitted in time to be filed in the office,

where it is required to be filed within 30 days after the person taking the appeal is served with the decision from which he is appealing." The regulations thus require that a notice of appeal must be filed within 30 days after the person taking the appeal is served with the decision from which appeal is taken. This Board has held that the timely filing of a notice of appeal is required to establish the jurisdiction of the Board to review the decision below and the failure to file the appeal within the time allowed mandates dismissal of the appeal. DNA-People's Legal Services, 49 IBLA 307 (1980); Ilean Landis, 49 IBLA 59 (1980); Lavonne E. Grewell, 23 IBLA 190 (1976); see Browder v. Director, Ill. Dept. of Corrections, 434 U.S. 257, 264 (1978); Pressentin v. Seaton, 284 F.2d 195, 199 (D.C. Cir. 1960). Although this Board is generally reluctant to take any action which would preclude review of appeals on the merits, the purpose of the rule is to establish a definite time when administrative proceedings regarding a claim are at an end in order to protect the public interest, and strict adherence to the rule is required. See Browder v. Director, *supra* at 264.

If the notice of appeal is filed after the 10-day grace period provided in 43 CFR 4.401(a), the notice of appeal will not be considered and the case will be closed by the officer from whose decision the appeal is taken. 43 CFR 4.411(b). If the notice of appeal is filed during the 10-day grace period, the delay in filing will be waived if it is determined that the notice was transmitted or probably transmitted before the end of the filing period. 43 CFR 4.401(a).

Appellant's notice of appeal should have been filed with BLM at least by August 5, 1981. Although appellant's notice was received on August 12, 1981, within the 10-day grace period, the notice of appeal is nevertheless unacceptable because it was not transmitted within the 30-day period following service of the decision. Shelley Anne Trainor, 21 IBLA 326 (1975); Elbert F. Howey, 15 IBLA 208 (1974); Margaret Chicharello, 9 IBLA 124 (1973). Such a failure to file timely under the circumstances is jurisdictional and mandates summary dismissal. 43 CFR 4.411(b); Elbert F. Howey, *supra*.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed.

Douglas E. Henriques

Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

James L. Burski
Administrative Judge

